



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

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DECISION OF THE BOARD

Mailed and Filed: JUNE 27, 2022

IN THE MATTER OF:

Appeal Board No. 621518

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective August 28, 2020, on the basis that the claimant voluntarily separated from employment without good cause; and reducing the claimant's right to receive future benefits by four effective days on the basis that the claimant made a willful misrepresentation to obtain benefits. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 9, 2022 (), the Administrative Law Judge overruled the Commissioner of Labor's timeliness objection and the initial determination of voluntary separation from employment without good cause and sustained the initial determination of willful misrepresentation.

The employer appealed the Judge's decision to the Appeal Board, insofar as it overruled the Commissioner of Labor's timeliness objection and the initial determination of voluntary separation from employment without good cause. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made insofar as they concern the issue of the Commissioner of Labor's timeliness objection.

The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issue of the Commissioner of Labor's timeliness objection, only, are fully supported by the record and, therefore, are adopted as the findings of fact and opinion of the Board.

As to the issue of voluntary separation from employment without good cause, the Board makes the following

FINDINGS OF FACT: The claimant has worked since 2016 for a home care agency as a home health aide. In July 2021, the claimant started experiencing symptoms including difficulty breathing, fever, and headache, as well as back pain that made it difficult for her to walk. She saw her doctor on August 27. After a COVID test came back negative, her doctor ordered other lab tests. The doctor told the claimant to stop working because of the back pain. The claimant informed the employer's coordinator that she was ill, and the coordinator gave her a week off from work.

The lab tests revealed that the claimant had a kidney infection. She was unable to work for about a week. She later informed the coordinator that she was better and ready to work. The coordinator said she would let the claimant know when there was work for her. When the coordinator did not call, the claimant called the coordinator several times, but was repeatedly told that there was no work for her. On October 26, 2020, the claimant filed a claim for benefits.

OPINION: The credible evidence establishes that the claimant separated from employment when she notified the employer's coordinator that she was ready to return to work after being sick for a week, and the coordinator failed to give the claimant an assignment. The claimant credibly testified that the coordinator said she would let the claimant know when there was work for her, and that she called the coordinator multiple times subsequently, but the coordinator did not bring her back. The coordinator did not testify, and the witness who appeared on behalf of the employer did not have first-hand knowledge of the claimant's conversations with the coordinator. Therefore, we accept the claimant's credible testimony regarding the substance of these conversations (see *Matter of Perry*, 37 AD2d 367 [3d Dept 1971]). Based on this testimony, we find that the employer, not the claimant, was the party who ended the employment relationship. Therefore, the claimant did not quit. Accordingly, we conclude that the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

The Commissioner of Labor's timeliness objection is overruled.

The initial determination, disqualifying the claimant from receiving benefits, effective August 28, 2020, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.
(Al reclamante se le asignan beneficios con respecto a los temas decididos en el presente.)

JUNE F. O'NEILL, MEMBER